

Comptroller General
of the United States
Washington, D.C. 20548

B-204078.2

RELEASED

May 6, 1988

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The Honorable William Lehman
Chairman, Subcommittee on Transportation
and Related Agencies
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

In your letter of March 2, 1988, you asked four questions relating to the interpretation of the Panama Canal Revolving Fund Act, as enacted by the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-1, 1330-269 through 1330-275, and the Department of Transportation and Related Agencies Appropriations Act, 1988, as enacted by the Joint Resolution making further appropriations for fiscal year 1988, and for other purposes, Pub. L. No. 100-202, 101 Stat. 1329-1, 1329-358 through 1329-390 (Appropriations Act). We shall address your questions in order.

1. Your first question is whether section 5422 of the Reconciliation Act, which establishes the Panama Canal Revolving Fund, eliminates the need for annual appropriations to the Panama Canal Commission before the Commission may incur obligations or make expenditures in carrying out its activities.

In our opinion, the creation of the revolving fund eliminates the need for annual appropriations to the Commission. However, as we discuss in our answer to question 3, below, authority to obligate or expend funds for administrative expenses must be provided in advance in annual appropriation acts.

Section 5422 amends section 1302 of the Panama Canal Act of 1979, 22 U.S.C. 3712, by establishing "in the Treasury of the United States a revolving fund to be known as the 'Panama Canal Revolving Fund'." The Fund is generally "available to the Commission to carry out the purposes, functions, and powers authorized" by the Panama Canal Act. The Fund is initially composed of all unappropriated balances in the Panama Canal Commission Fund, and the unexpended balance of all appropriations to the Commission, at the close of business on the day before the effective

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date of the amendments (which is January 1, 1988). Thereafter, all toll receipts and other receipts of the Commission are to be deposited in the Revolving Fund on a continuous basis.

We have interpreted legislation creating "revolving funds" as establishing continuing appropriations which, unless restricted by the terms of the legislation, are available to agencies without further legislative action to carry out their authorized purposes. See B-209680, Feb. 24, 1983; 35 Comp. Gen. ~~V~~615, 618 (1956); 35 Comp. Gen. ~~V~~436, 438 (1956). Moreover, we have held that any statute which authorizes the deposit of receipts in a specific fund, and which makes the fund available for carrying out specific purposes, without the need for further congressional action, constitutes a continuing or permanent appropriation. E.g., 60 Comp. Gen. ~~V~~323, 325 (1981); B-193573, Dec. 19, 1979; ~~V~~50 Comp. Gen. ~~V~~311, 313 (1978).

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The amendment effected by section 5422 of the Reconciliation Act designates the fund it establishes as a "revolving fund." Further, it makes the fund available to carry out the authorized activities of the Commission. Therefore, we conclude that the establishment of the Panama Canal Commission Fund constitutes a permanent appropriation and therefore has eliminated the need for annual appropriations to the Commission. As we indicate in our answer to your third question below, however, the Commission may not use the permanent appropriation for administrative expenses without specific authority provided in an appropriations act.

2. Your second question is whether paragraph 1302(c)(1) of the Panama Canal Act, as amended by section 5422 of the Reconciliation Act, is consistent with section 305 of the Appropriations Act. In our opinion, the two provisions are consistent.

The Reconciliation Act and the Appropriations Act, as incorporated in the Continuing Resolution, became law on the same day, December 21, 1987. Therefore, we assume that the Congress intended the two laws to be interpreted and applied consistently whenever possible.

Paragraph 1302(c)(1) of the Panama Canal Act, as amended by the Reconciliation Act, provides, in general, that

"no funds may be obligated or expended in any fiscal year unless such obligation or expenditure has been specifically authorized by law."

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In our opinion, under this provision obligations and expenditures from the Revolving Fund must be supported by annual authorizations.^{1/}

Section 305 of the Appropriations Act, on the other hand, is a restriction on the use of the appropriations made to the Commission for fiscal year 1988. It provides:

"None of the funds appropriated in this Act for the Panama Canal Commission may be expended unless in conformance with the Panama Canal Treaties of 1977 and any law implementing those treaties."

Reading the two statutes together, we conclude that both restrictions apply during fiscal year 1988. Obligations and expenditures using fiscal year 1988 appropriations to the Commission--which, as we conclude below, were transferred to the Revolving Fund--must be both in conformance with the 1977 treaties (and implementing legislation) and annually authorized.

We see no inconsistency between these two restrictions. First, the Revolving Fund is only available to carry out the Panama Canal Act, the implementing legislation for the treaties. Thus, obligations and expenditures from the Revolving Fund during fiscal year 1988 will necessarily be "in conformance" with the treaties and implementing legislation. Second, sections 5411 through 5413 of the Reconciliation Act, which we assume (without deciding) satisfy the annual authorization requirement for fiscal year 1988, authorize necessary expenses of the Commission "incurred under the Panama Canal Act of 1979," again assuring that obligations and expenditures will be "in conformance" with the treaties and legislation, as required

^{1/} This conclusion is made clear by reading section 1303 of the Panama Canal Act, as amended by the Reconciliation Act, which provides the Commission emergency authority to use the Revolving Fund when "authorizing legislation described in section 1302(c)(1) has not been enacted for a fiscal year, . . ." (Emphasis added).

by section 305 of the Appropriations Act.^{2/} Thus, section 305 and paragraph 1302(c)(1) are consistent.^{3/}

3. Your third question asks whether paragraph 1302(c)(2) of the Panama Canal Act, as amended by section 5422 of the Reconciliation Act, acts as an absolute bar to the incurring of obligations and expenditure of funds for administrative expenses of the Commission unless an annual appropriation act provides specific authority to incur the obligations or make the expenditures. We read paragraph 1302(c)(2) as requiring appropriation act authority prior to the use of the Revolving Fund for administrative expenses of the Commission.

As we stated above, the establishment of the Panama Canal Revolving Fund allows the Commission to carry out its activities without the need for annual appropriations. The statute, however, provides that the Revolving Fund is available to the Commission "subject to subsection (c)" Subsection (c) contains two restrictions on the Commission's use of the Fund. The first, which we discussed in our answer to your second question, requires annual authorizations for obligation or expenditure of any funds

2/ It might be argued that sections 5411 through 5413 of The Reconciliation Act are not sufficiently specific to satisfy the annual authorization requirement of paragraph 1302(c)(1). If that were so, the Commission could still operate under the emergency authority provided by amended section 1303 of the Panama Canal Act. Under that authority the Commission could use the Revolving Fund to assure the continued operation of the Panama Canal. Obligations and expenditures under this emergency authority would also be "in conformance" with the treaties and implementing legislation, as required by section 305.

3/ As a second part of your question 2, you ask:

"What would be the effect if section 305 were not continued in subsequent appropriation acts--would annual authorizations be required for the Commission to incur obligations or make expenditures?"

As we have indicated, annual authorization of Commission obligations and expenditures from the Revolving Fund is required by paragraph 1302(c)(1), which is permanent legislation applicable to "any fiscal year." Therefore, omission of section 305, or its equivalent, from future appropriations acts will not affect this requirement.

from the Fund. The second, contained in paragraph 1302(c)(2), reads:

"No funds may be obligated or expended by the Commission in any fiscal year for administrative expenses except to the extent or in such amounts as are provided in appropriations Acts."

In our opinion, this provision is a clear prohibition on the obligation or expenditure of funds by the Commission for administrative expenses unless specifically provided for in an appropriation act. We are unable to read into this language any support for an alternate interpretation that it merely provides an opportunity for the Congress, if it chooses, to place a limitation on administrative expenses.

An examination of section 1303 of the Panama Canal Act makes it clear that the Congress intended the administrative expenses restriction to be read strictly. That section provides emergency authority for the Commission to use the Revolving Fund to operate the Panama Canal in a fiscal year in which authorizing legislation has not been enacted. However, section 1303 adds that "[t]he authority of this section may not be used for administrative expenses." It is unlikely that the Congress would have made an emergency authority inapplicable to administrative expenses if it intended the restrictions on the use of the Revolving Fund for such expenses to be optional.

4. Your fourth question asks whether the budget authority provided in the Appropriations Act was rescinded by the Reconciliation Act or merely transferred to the Revolving Fund. In our opinion, the Reconciliation Act transferred the appropriations to the Revolving Fund.

The amendments to the Panama Canal Act, enacted by sections 5421 through 5429 of the Reconciliation Act, constitute a radical change in the manner in which the activities of the Panama Canal Commission are funded. Rather than receiving annual appropriations out of the Panama Canal Commission Fund, the Commission will now operate with a revolving fund, which, as we concluded above, requires no annual appropriations.

In effecting this significant change, the Congress made detailed provisions for the transition from the old to the new funding method. Paragraph 1302(a)(2) of the Panama Canal Act, as amended by the Reconciliation Act, designated the following transition events to take place on January 1, 1988:

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1. The Panama Canal Commission Fund was to be terminated;

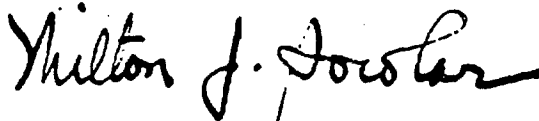
2. The unappropriated balance in the Panama Canal Commission Fund, as of the close of business on December 31, 1987, was to be transferred to the Revolving Fund; and

3. The unexpended balance of appropriations to the Commission, as of the close of business on December 31, 1987, was to be transferred to the Revolving Fund, to remain available until expended.

Therefore, the Reconciliation Act amendments did not rescind the appropriations made by the Appropriations Act, but rather transferred them to the Revolving Fund.

We trust that this opinion is responsive to your needs. In accordance with our usual practice, unless you make it public sooner, we will make this opinion available for public distribution 30 days from today.

Sincerely yours,



Acting Comptroller General
of the United States

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APPROPRIATIONS/FINANCIAL MANAGEMENT

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